

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into the establishment of operations support systems permanent performance measures for incumbent local exchange telecommunications companies.

DOCKET NO. 000121C-TP
ORDER NO. PSC-03-0282-PAA-TP
ISSUED: February 28, 2003

The following Commissioners participated in the disposition of this matter:

LILA A. JABER, Chairman
J. TERRY DEASON
BRAULIO L. BAEZ
RUDOLPH "RUDY" BRADLEY
CHARLES M. DAVIDSON

NOTICE OF PROPOSED AGENCY ACTION ORDER APPROVING FCC PLAN FOR PERFORMANCE METRICS AND ORDER SETTING FOR HEARING OTHER PROPOSED MEASURES

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein regarding approval of the FCC performance metrics plan for Verizon is preliminary in nature and will become final unless a person whose interests are substantially affected by that portion of the Order files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

Background

Docket No. 000121-TP was opened to develop permanent performance metrics for the ongoing evaluation of operations support systems (OSS) provided for alternative local exchange carriers' (ALECs) use by incumbent local exchange carriers (ILECs).

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Associated with the performance metrics is a monitoring and enforcement program that ensures ALECs receive nondiscriminatory access to the ILEC's OSS. Performance monitoring is necessary to ensure that ILECs are meeting their obligation to provide unbundled access, interconnection and resale to ALECs in a nondiscriminatory manner. Additionally, it establishes a standard against which this Commission and ALECs can measure performance over time to detect and correct any degradation of service provided to ALECs.

Docket No. 000121-TP consists of three phases. Phase I began with workshops conducted by our staff with members of the ALEC and ILEC communities. These workshops were held on March 30, 2000, August 8, 2000, and December 13, 2000. The purpose of Phase I was to determine and resolve any policy and legal issues in this matter. Phase II involved establishing permanent metrics for BellSouth Telecommunications, Inc. (BellSouth), including a specific monitoring and enforcement program. By Order No. PSC-01-1819-FOF-TP, issued September 10, 2001, we established permanent performance measures and benchmarks as well as a voluntary self-executing enforcement mechanism (Performance Assessment Plan) for BellSouth. By Order No. PSC-02-0187-FOF-TP, issued February 12, 2002, as amended by Order No. PSC-01-0187A-FOF-TP, issued March 13, 2002, BellSouth's Performance Assessment Plan was approved.

With the completion of Phase II, we began Phase III of this docket, which entails the establishment of performance metrics and a performance monitoring and evaluation program for Verizon Florida, Inc. (Verizon) and Sprint-Florida, Incorporated (Sprint). By Order No. PSC-02-0503-PCO-TP, issued April 11, 2002, Docket No. 000121-TP was divided into three subdockets: (1) 000121A-TP, in which filings directed toward the BellSouth track would be placed; (2) 000121B-TP, in which filings directed toward the Sprint track would be placed; and (3) 000121C-TP, in which filings directed toward the Verizon track would be placed.

A Performance Measurement Plan (PMP) should include several key elements including service quality measures, business rules, reporting requirements, auditing provisions and statistical methodology. Accordingly, on November 15, 2002, our staff issued a proposal that addressed these elements for a Verizon PMP. That

proposal was a hybrid of the plan filed by the company in this docket, consisting of the 17 measurements the FCC plan required in the GTE/Bell Atlantic merger, plus seven additional measurements our staff believed were necessary to add adequate breadth and depth to comprehensively assess OSS performance. On December 4 and 18, 2002, Verizon and the Joint ALECs filed their comments and supplemental comments, respectively, on the proposal.

Verizon agreed, in part, with our staff's proposal, supporting the original 17 measures that comprised the Florida Carrier-to-Carrier Guidelines and Performance Standards the company originally proposed. However, Verizon disagreed with the inclusion of the seven supplemental metrics on the grounds that they were largely redundant and unjustified. Verizon also proposed changes regarding the effective date of the PMP, and the monthly reporting cycle. In addition, Verizon proposed that we clarify that industry-agreed changes to the plan may be flowed through automatically, upon 30 days' advance notice to the Commission and all affected carriers.

The Joint ALECs generally agreed with our staff's proposal, but believed an additional six performance measures were needed to supplement the 24 proposed by our staff. In addition, the Joint ALECs argued that the entire cost of annual audits should be borne by Verizon and not be allocated 50 percent to ALECs. Finally, the Joint ALECs disagreed with Verizon and proposed that any future changes to the plan not be automatically flowed through, and instead suggested a period for comment by both interested ALECs and the Commission.

This Order addresses only the proposed establishment and implementation of operations support systems permanent performance measures for the Verizon Track, Docket No. 000121C-TP.

Jurisdiction

We are vested with jurisdiction over this matter pursuant to Sections 364.01(3) and (4)(g), Florida Statutes. Pursuant to Section 364.01 (3), Florida Statutes, the Florida legislature has found that regulatory oversight is necessary for the development of fair and effective competition in the telecommunications industry.

To that end, Section 364.01 (4) (g), Florida Statutes, provides, in part, that the Commission shall exercise its exclusive jurisdiction in order to ensure that all providers of telecommunications service are treated fairly by preventing anticompetitive behavior. Furthermore, the FCC has encouraged the states to implement performance metrics and oversight for purposes of evaluating the status of competition under the Telecommunications Act of 1996.

Discussion of Issues

The areas of concern identified by Verizon and the Joint ALECs in their filed comments are in the following categories:

1. Performance Metrics
2. Implementation of Plan Changes
3. Allocation of the Cost of Annual Audits
4. Time Frame for Posting Performance Reports and for the Plan's Effective Date

The positions of each party and our conclusion is presented below.

A. Performance Metrics

Verizon's Preliminary Comments-December 4, 2002

Verizon disagreed with our staff's inclusion of seven supplemental metrics on the grounds that they were largely redundant and unjustified, while adding unnecessary complexity and difficulty to the calculation and monitoring of the plan. Verizon stated that the additional seven metrics proposed would, considering the submetrics, increase the items measured from 157 to 209, representing an increase in detail over the company's proposed plan of more than 30 percent.

Verizon argued that its proposed 17 measures are the same ones the FCC requires the company to report as a condition of the GTE/Bell Atlantic merger. According to Verizon, those measures address all unbundled network elements (UNEs), resale and local interconnection services that ALECs purchase. Verizon adds that

its proposed measurements are reported for all key transaction areas, including preordering, ordering, provisioning, maintenance, network performance, and billing.

Joint ALECs' Preliminary Comments-December 4, 2002

The Joint ALECs recommend that Verizon be required to implement the same measures for which it currently reports performance in California and North Carolina. The Joint ALECs argue that reporting at this level will bring Verizon's reporting requirements close to those proposed by Sprint for reporting its performance, will include more BellSouth-equivalent measures, and as a result will provide greater consistency for ALECs monitoring ILEC performance in Florida.

As a result, the Joint ALECs proposed an additional six performance metrics to supplement the 24 metrics proposed by our staff. According to the Joint ALECs, those additional metrics monitor key areas of ILEC service to ALECs and are reported by Verizon in other states, including California and North Carolina. The Joint ALECs further point out that equivalent measures are reported by both Sprint and BellSouth in Florida and were approved for Sprint's performance measurement plan in Florida.

Verizon's Supplemental Comments-December 18, 2002

Verizon stated in its supplemental comments that it opposes the Joint ALECs' suggested addition of six more performance measures for the same reasons it opposes our staff's additional seven measures. Verizon urged that the Joint ALECs have not explained how Verizon's plan is incomplete or inadequate without the proposed revisions, and have made no attempt to justify inclusion of the specific suggested measures.

Verizon also stated that the Joint ALECs failed to point out that several components of the California and North Carolina plans are in dispute as explicitly recognized by those commissions. Verizon argued that it would be inappropriate to adopt measures here on the basis that they are reported elsewhere without an understanding of the ongoing process there. Verizon stated that if

this Commission is inclined to adopt the additional measures proposed by the Joint ALECs, we should also explicitly recognize that a number of them are subject to ongoing disputes and may be modified as a result of the continued collaborative process in California.

Joint ALECs Supplemental Comments-December 18, 2002

On December 18, 2002, the Joint ALECs filed their supplemental comments on our staff's proposal. The Joint ALECs commented that the proposal is a hybrid of Verizon's "FCC" plan and the plan Verizon has implemented in California. The Joint ALECs argued that because the additional seven measures proposed by our staff, and the additional six they proposed, are already reported by Verizon in California, it is difficult to understand why Verizon would find them unduly complex or difficult to administer in Florida. The Joint ALECs state that this argument extends to the ability of this Commission and the industry to monitor and understand the additional measures.

The Joint ALECs recommend that the California plan, which Verizon already has implemented in other states, be adopted for Florida. According to the Joint ALECs, this duplication of another state's plan for initial reporting purposes should mitigate any administrative burden on Verizon in reporting its performance in Florida. The Joint ALECs further suggest that, after implementation of the California Plan in Florida, any changes could be taken up in the review process established in staff's proposal.

Staff Recommendation

Our staff agrees with the Joint ALECs that the simplest and most effective solution to address the concerns raised by Verizon regarding the complexity of implementing a hybrid PMP is to recommend adoption of the performance metrics included in the California plan. It is also urged by our staff that adoption of the California plan would satisfy its desire for a more comprehensive performance measurement plan than that originally proposed by Verizon, while simplifying the process for Verizon since it already implemented this plan in California, North

Carolina, and other states. It, further, was noted that California is currently engaged in its six-month review of this process.

Our staff also points out that the California plan closely mirrors, in every major respect, the performance measurement plan recently Ordered by us for Sprint in Docket NO. 000121B-TP.

Conclusion

Though the ALECs and our staff have made a persuasive case for adoption of the California Plan, there are several considerations which suggest that further exploration would be more appropriate. We note that, though the plan is implemented in California, North Carolina and other states, it is still in dispute in those states. Accordingly, the additional metrics ordered in those states are still unsettled and are subject to modification. However, there seems to be little dispute over the basic 17 metrics ordered by the FCC in the GTE/Bell Atlantic merger.

Additionally, Verizon makes credible argument that those metrics, when added to the 17 required by the FCC, may not be equally appropriate in Florida just because they are in place in another state. Verizon urges that many of the industry representatives in other states have no nexus to Florida and may not represent the unique interests of our state. Also, Verizon urges, they are mostly redundant and unnecessarily increase the costs and complexity of assuring accountability.

Therefore, we find that only the 17 FCC-mandated metrics should be approved for Verizon at this time. We further find that the remaining metrics proposed by our staff should be examined in the context of a full hearing wherein all interested parties may fully urge their respective positions.

B. Implementation of Plan Changes

Verizon's Preliminary Comments-December 4, 2002

Verizon proposes that industry-stipulated changes to the plan may be flowed through automatically, upon 30 days advance notice to

the Commission and all affected carriers. Verizon argues that this is the most efficient process for both ILECs and ALECs and that it will ensure the industry in Florida quickly receives the benefits of the most recent updates to the plan.

Joint ALECs Supplemental Comments-December 4, 2002

The Joint ALECs state that they oppose automatic adoption of plan changes from other states. The Joint ALECs express their opposition "even though Verizon appears to specify these changes would only include industry-agreed changes, thus not applicable to Commission-ordered changes from other states."

The Joint ALECs state their position in this area is because the make-up of industry participation varies from state to state, and ALECs participating in Florida may not have participated in the state in which the changes originated. The Joint ALECs argue that interested ALECs and Commission staff should be allowed an opportunity to review such changes, and that a recommendation should be brought before this Commission.

Staff Recommendation

Our staff agrees with the Joint ALECs and recommends that the ALECs and Commission staff be allowed the opportunity to notice, review, and comment on any such changes before they are implemented.

Conclusion

The manner in which we address changes to the process is an important decision deserving of exploration in the context of a hearing. Accordingly, this issue shall be a part of the hearing wherein the balance of the proposed metrics is addressed.

C. Allocation of Cost of Annual Audits

Joint ALEC Preliminary Comments-December 4, 2002

In their comments filed on December 4, 2002, the Joint ALECs requested modifications to our staff's proposal regarding allocation of costs for annual audits of Verizon's performance reporting systems and processes. As stated by the ALECs, the original proposal recommended that the costs of these audits be split 50 percent to Verizon, and 50 percent to the ALECs.

The Joint ALECs take the position that Verizon should be responsible for all costs associated with audits of Verizon's performance data and reports. The Joint ALECs argue that Verizon has the obligation to provide accurate reports and, therefore, has an obligation to demonstrate those reports are accurate.

Finally, the Joint ALECs urge consistency with the process adopted for other ILECs in Florida, whereby the ILEC is responsible for all costs associated with audits of its performance data and reports.

Verizon Supplemental Comments-December 18, 2002

In its supplemental comments filed December 18, 2002, Verizon opposed the Joint ALECs' claim that all such costs should be borne by Verizon. Pointing to the Joint ALECs' argument that Verizon "has an obligation to demonstrate that its performance reports are accurate" and that it should be required "to provide independent validation that it is providing nondiscriminatory access to its OSS through accurate reporting of its performance results," Verizon stated that the ALECs are the cause and primary beneficiaries of audits. As such, Verizon argues that the ALECs should pay their fair share of the costs. In addition, Verizon states that, aside from being fair, sharing costs would help ensure the scope of an audit is no broader than necessary to satisfy the ALECs' legitimate needs for verifying Verizon's reporting.

Staff Recommendation

Our staff agrees with the arguments of the Joint ALECs and recommends that Verizon be required to bear the entire costs of audits of its performance data and reports.

Conclusion

This issue is complicated by the fact that we have an established precedent in Florida where the ILEC bears the entire cost of the audits, but in other states, including California, the cost is allocated between the ILEC and the ALEC. It appears that the issue requires further evaluation and should also be addressed in the context of a formal hearing. Accordingly, this issue will also be submitted for review as a part of the hearing on the additional performance metrics.

D. Time Frame for Posting Performance Reports and for the Plan's Effective Date

Verizon also commented on two timing-related issues contained in our staff's proposal: the time frame for submitting performance reports, and the plan's effective date. In its comments, Verizon urged that, except where noted otherwise, the FCC requires it to report performance metrics and analysis on the twenty-fifth day of the month succeeding the reporting period. In addition, Verizon explained that the processes involved in production of necessary data make it impossible to report on the fifteenth of each month as proposed.

Regarding the PMP's effective date, Verizon commented that the proposal recommends that the Performance Measurement Plan should take effect within 30 days of our Order approving the plan. Verizon explained in its comments that performance data is tied to complete data months. As such, if an order approving the plan were to be issued, for example, on the fifteenth of the month, Verizon would be required to launch the plan in middle of the data month. According to Verizon, this would be incompatible with the nature of the plan. Verizon also commented that in addition to needing a full month of data, time would also be needed to accommodate necessary system programming and testing in implementing the plan. As a result, Verizon requests that the Plan's effective date be the first full month commencing 90 days after the Commission's final order.

Conclusion

We agree with Verizon's comments in these two areas. Additionally, we note no opposition from the ALECs to Verizon's position. Accordingly, we find that the respective time frames be as urged by Verizon. The effective date for implementation of the metrics approved by this Order shall be the first full month commencing 90 days after the Proposed Agency Action portion of this Order, or the unprotested portion thereof, becomes final and a Conjugating Order is issued. Verizon shall report performance metrics and analysis on the twenty-fifth day of the month succeeding the reporting period.

Based on the foregoing, it is therefore

ORDERED by the Florida Public Service Commission that only the 17 FCC-mandated metrics are ordered imposed on Verizon at this time. It is further

ORDERED that the effective date for implementation of the ordered metrics shall be the first full month commencing 90 days after this Proposed Agency Action portion of the Order, or the undisputed aspects thereof, becomes final and a Conjugating Order is issued. It is further

ORDERED that Verizon shall report the performance metrics and analysis on the twenty-fifth day of the month succeeding the reporting period. It is further

ORDERED that the above provisions of this Order addressing approval and implementation of the 17 FCC-mandated metrics are issued as proposed agency action, and shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDER NO. PSC-03-028Z-PAA-TP
DOCKET NO. 000121C-TP
PAGE 12

ORDERED that any protest of our Proposed Agency Action decision contained herein shall identify with specificity the item or metric being protested and any such protest shall not prevent the remainder to the Order from becoming final and effective. It is further

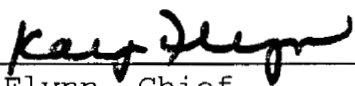
ORDERED that a hearing be set for the purposes of further exploring the other aspects of our staff's proposed plan that are not specifically approved herein. It is further

ORDERED that this Docket shall remain open pending the hearing and subsequent implementation of all approved measures.

By ORDER of the Florida Public Service Commission this 28th day of February, 2003.

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

By: _____


Kay Flynn, Chief
Bureau of Records and Hearing
Services

(S E A L)

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

A portion of the action proposed herein regarding approval of the 17 FCC-mandated metrics is preliminary in nature. Any person whose substantial interests are affected by that action proposed in this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on March 21, 2003.

In the absence of such a petition, the Proposed Agency Action portion of this Order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed

ORDER NO. PSC-03-0282-PAA-TP
DOCKET NO. 000121C-TP
PAGE 14

with the Director, Division of the Commission Clerk and Administrative Services, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.